

In the United States Patent and Trademark Office

Applicants: Chet M. Crump et al. Docket No.: BA-00117
 Serial No.: 09/459,522 Group: 3761
 Filed: December 13, 1999 Examiner: Darwin P. Erez
 For: Endotracheal Catheter and Date: November 13, 2001
 Manifold Assembly with Improved
 Valve

Provisional Terminal Disclaimer**RECEIVED**

ASSISTANT COMMISSIONER FOR PATENTS
 Washington, D.C. 20231

DEC 06 2001

Sir:

The Present Application

1. Ballard Medical Products, doing business at 12050 Lone Peak Parkway, Draper, Utah, 84020, is the assignee of the entire right, title and interest in and to the above-referenced present pending U.S. patent application serial number 09/459,522 filed on December 13, 1999 for "Endotracheal Catheter and Manifold Assembly with Improved Valve".
2. Assignment of the inventors' rights in present patent application serial number 09/459,522 to Ballard Medical Products is evidenced by an assignment document which has been recorded in the U.S. Patent and Trademark Office at Reel 010643, Frame 0806.

Copending Commonly Assigned Application

1. Ballard Medical Products is also the assignee of the entire right, title and interest in and to copending U.S. patent application serial number 09/471,317 filed on December 23, 1999 for "Endotracheal Catheter and Manifold Assembly with Improved Seal and Valve".
2. Assignment of the inventors' rights in copending patent application serial number 09/471,317 to Ballard Medical Products is evidenced by an assignment document which has been recorded in the U.S. Patent and Trademark Office at Reel 010694, Frame 0294.

Right of Assignee to Prosecute

Ballard Medical Products certifies:

- (a) that the evidentiary documents have been reviewed; and
- (b) that to the best of Ballard Medical Products' knowledge and belief, title of present U.S. patent application serial number 09/459,522 is in Ballard Medical Products.

Provisional Terminal Disclaimer

1. In the event that a patent based upon copending U.S. patent application serial number 09/471,317 issues prior to any patent based upon the present U.S. patent application serial number 09/459,522, Ballard Medical Products hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the present U.S. patent application serial number 09/471,317, which would extend

beyond the expiration date of the full statutory term, including any applicable term extensions, defined in 35 U.S.C. 154 and 156 for said earlier issuing patent.

2. Ballard Medical Products hereby agrees that any patent granted upon present U.S. patent application serial number 09/459,522 shall be enforceable only for and during such period that the legal title to such patent shall be the same as the legal title to copending U.S. patent application serial number 09/471,317 and any patent(s) issuing therefrom. This agreement shall run with any patent granted upon present U.S. patent application serial number 09/459,522 and shall be binding upon Ballard Medical Products, its successors and/or assigns.

Exceptions to Provisional Terminal Disclaimer

In the event that, after the filing of this Terminal Disclaimer, any patent based upon copending U.S. patent application serial number 09/471,317:

- (a) expires for failure to pay a maintenance fee;
- (b) is held unenforceable;
- (c) is found invalid by a court of competent jurisdiction;
- (d) is statutorily disclaimed in whole;
- (e) is terminally disclaimed under 37 C.F.R. 1.321(a);
- (f) has all of its claims canceled in a reexamination certificate; or
- (g) is otherwise not deemed to provide the rights conveyed by 35 U.S.C. 154 prior to the expiration of its full statutory term;

Ballard Medical Products specifically does not disclaim any terminal part of any patent granted on the present U.S. patent application serial number 09/459,522 prior to the expiration date of the term defined in 35 U.S.C. 154 and 156 including any term extensions as applicable to any patent granted on copending U.S. patent application serial number 09/471,317.

Fee

Pursuant to 37 C.F.R. 1.321(c)(1), please charge the \$110.00 fee due in accordance with 37 C.F.R. 1.20(d) to Kimberly-Clark Worldwide, Inc.'s deposit account number 11-0875. This Provisional Terminal Disclaimer is filed in duplicate.

The undersigned is an attorney of record in the present application having serial number 09/459,522.

Respectfully submitted,

KIMBERLY-CLARK WORLDWIDE, INC.

Chet M. Crump

By:



Nancy M. Klenbus

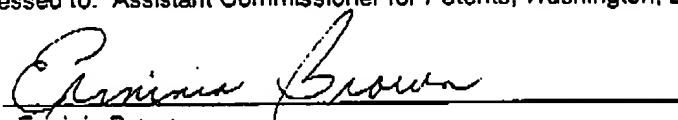
Reg. No. 40,051

Date: November 13, 2001

CERTIFICATE OF MAILING

I, Erminia Brown, hereby certify that on November 13, 2001 this Provisional Terminal Disclaimer is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

By:


Erminia Brown